Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	WT Docket 02-55
Illinois Public Safety Agency Network	)	
	)	Mediation No. TAM-12389
and	)	
	)	
Nextel Communications, Inc.	)	

To: The Commissioners

REPLY TO OPPOSITION TO
APPLICATION FOR REVIEW

Illinois Public Safety Agency Network ("IPSAN"), by and through counsel, and in accord with Section 1.115 of the Commission's Rules, replies to Nextel Communications, Inc.'s ("Nextel") Opposition to IPSAN's Application for Review of the Order issued on July 29, 2011 in the above captioned matter and states the following:

Nextel's claim to the contrary, IPSAN did not *fail* to follow the Bureau's instructions in the March 23, 2011 *MO&O*. IPSAN *could not* have complied with the Bureau's instructions (as the Bureau has interpreted them) under the circumstances presented. The change in vendor was required to maintain the integrity of IPSAN's purchasing and to avoid dealing with a vendor which IPSAN concluded had a conflict of interest. In any event, even if IPSAN had continued to utilize Motorola to perform the services, Motorola stated that it would have needed to update its estimates that were by their own terms no longer valid because the estimates had expired. That the estimates expired is a portion of the record as all estimates presented by Motorola must be agreed to by contract within a specific time

period or Motorola states that the estimates are withdrawn.[1] This is standard practice for vendors and IPSAN's situation was no different. Therefore, Nextel is arguing that ISPAN should have known when the Bureau's Order would be released and the contents of the Bureau's decision, including the incredibly short period of time that the Bureau was suggesting for completion of mediation, and had fresh estimates at the ready. That argument is bizarre as its places an impossible burden upon IPSAN under any circumstances.

What neither the Bureau nor Nextel have addressed is what IPSAN might have done differently prior to the March 23, 2011 release of the Bureau's *MO&O*. If IPSAN had informed the Bureau that it was contemplating a change in vendors, what effect would that have had on the Bureau's processing of the matter, which had already languished before the Bureau for months upon months? Would the parties then recommence the FRA negotiation and, thus, moot the earlier mediation? That would not have been in either party's best interests. And until the Bureau had ruled on the issue of the second touch, for what methodology would the new vendor be providing estimates? Accordingly, the best and most efficient means of wrapping up the mediation and negotiation was to await the Bureau's *MO&O* and then obtain alternative estimates based on the Bureau's decision. That IPSAN was not able to accomplish that task within the extremely short time period articulated in the Bureau's decision was not even close to bad faith. It was simply reality.

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[1] In effect, therefore, IPSAN's withdrawal of the estimates was unnecessary, since the estimates were invalid on their face.

And if the central issue of this matter rests on delays in the process, IPSAN is the least culpable. The Bureau added many months to the process as the parties awaited release of the *MO&O*, Nextel added months to the process while it was dickering with Motorola over a $200,000 line item in the original FRA negotiations, and the TA Mediator added months to the process by issuance of the *Order to Show Cause*. Accordingly, the Bureau's decision stands for the obvious proposition that only IPSAN will be held accountable for delay and that all other participants in the matter are free to create delay without criticism. This kind of selective enforcement of an unwritten rule of conduct should not be the basis for punishing IPSAN and should be rejected upon review.

Nextel's assertion that IPSAN was not punished by the Bureau is absurd. Of course it was. IPSAN is being made to pay costs that either would have been paid under the normal course of follow-up mediation or which arose solely due to the exercise of its due process rights in responding to the *Order to Show Cause* which order was issued as a portion of mediation. IPSAN took all reasonable steps to have the *Order to Show Cause* not released and stated emphatically that the order was unnecessary and would create needless delay to the process. That the process was needlessly delayed is apparent in what occurred following the issuance of the Bureau's second Order on July 29, 2011. With new estimates in hand IPSAN was able to conclude all negotiations with Nextel within a few days. Besides, Nextel's argument that the Bureau's action is tantamount to a Section 503(b) forfeiture

demonstrates that Nextel believes that IPSAN was, indeed, punished for its inability to jump to the ready to conclude a deal as fast as the Bureau originally demanded. However, as IPSAN has pointed out, the Commission's 800 MHz rebanding Orders do not provide for a deprivation of mediation costs to licensees and such is fully reimbursable from Nextel. As for Section 503(b), it does not apply here as none of the required processes for issuance of a forfeiture were performed by the Bureau, e.g. issuance of a Notice of Apparent Liability.

Therefore, although IPSAN, by Nextel's admission, was saddled with what amounts to a forfeiture, IPSAN was provided no due process rights afforded under law respecting forfeitures.

Finally, to be clear, IPSAN is not requesting monies for the preparation of any document filed before the Bureau, i.e. post-mediation costs. Rather, IPSAN is only requesting that upon review the Commission allow IPSAN to recover the costs of mediation following the issuance of the Bureau's March 23, 2011 *MO&O*, including the cost of responding to the *Order to Show Cause*. Those costs are fully reimbursable in accord with the Commission's Orders within Docket WT 02-55 and would have been paid by Nextel but for the Bureau's decision. Nextel's wilful mischaracterization of those costs as "post-mediation" is simply wrong. That term refers to costs arising out of a party's appearance before the Commission which costs IPSAN is not requesting. The costs arose while IPSAN

was appearing before the mediator as directed by the Bureau. Under any circumstances, the parties required further mediation to conclude a deal in accord with Bureau's March 23, 2011 *MO&O* and IPSAN's costs to participate in that further mediation should be fully reimbursable.

For the foregoing reasons and those expressed within its Application For Review, ISPAN respectfully requests that upon review the Commission allow IPSAN to recover from Nextel all of its mediation costs, including those arising following the release of the Bureau's March 23, 2011 *MO&O*.

Respectfully submitted,
ILLINOIS PUBLIC SAFETY AGENCY NETWORK

By: _____
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Dated: September 15, 2011

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Certificate of Service

I, Robert Schwaninger, certify that on this 15th day of September, 2011, a copy of the foregoing Reply To Opposition To Application For Review was sent electronically to the following person:

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